

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
v.)	Criminal No. 07-04-P-H
)	
CHRISTOPHER A. CONLEY,)	
)	
Defendant)	

ORDER OF REVOCATION AND DETENTION

This matter came before me this date for a hearing on the government's Motion to Revoke Bail ("Motion") (Docket No. 52) pursuant to 18 U.S.C. § 3148. The defendant appeared with counsel. The government relied on the affidavit of U.S. Probation Officer Daniel P. Kelly filed in support of the Motion, on Officer Kelly's testimony at hearing and on one exhibit admitted in evidence detailing the number of occasions since his release on bail that the defendant has reported to the Probation Office for drug testing.

Following the defendant's entry of a conditional guilty plea on June 8, 2007, the court, after hearing, continued the defendant on release pursuant to the Order Setting Conditions of Release entered on December 19, 2006 (Docket No. 6). Among the conditions contained in that order are those requiring the defendant to report to the U.S. Probation Office (par. 7(a)) and to submit to drug testing (par. 7(q)). At the post-plea hearing, and in response to testimony describing the difficulty the pretrial services officer and the Probation Office generally were having in communicating with the defendant, Judge Hornby ordered the defendant to be available by cell phone provided to him by his father. This requirement is part and parcel of the reporting requirement embodied in condition 7(a).

The defendant has failed to abide by this condition on two occasions by not answering calls placed to him on his cell phone by Probation and not returning those calls despite voice mail messages left for him. The defendant has also violated the drug-testing requirement by failing to produce urine samples when ordered to do so on July 3rd and 5th. Although the defendant contends that he was simply unable to void on either of those days when he was at the Probation Office, he was given several hours the first day to do so and all of July 4th to prepare to return for that same purpose on July 5th. In fact, on July 5th, despite having been told to report for testing that morning, the defendant did not show up until 12:30 p.m. When he had not produced a sample by 2:30 p.m. he was told to return by 4:30 for that purpose but did not return. On 16 prior occasions the defendant had successfully produced urine samples at the Probation Office. I agree with Officer Kelly that the defendant's failure to produce a urine sample on either of July 3rd or 5th was a deliberate "stall" or avoidance, most likely to conceal the use of illegal drugs during that time frame.

On the basis of the hearing record, I find by clear and convincing evidence that the defendant has violated paragraphs 7(a) and (q) of the Order Setting Conditions of Release dated and filed on December 19, 2006.

The foregoing notwithstanding, the defendant seeks to be retained on release. However, it is apparent that, based on the nature and circumstances of the current violations and the overall travel of this case, he is unlikely to abide by any condition or combination of conditions of release, and I so find. Accordingly, I **ORDER** that the defendant's release be revoked and that he be detained pending sentence.

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons serving sentences or being held in custody pending appeal. The defendant shall be afforded a

reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purposes of an appearance in connection with a court proceeding.

Dated this 12th day of July, 2007.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge